IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7327 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOMAJI BHIKHAJI THAKOR

Versus

THAKOR KHODAJI MANAJI

Appearance:

1. Special Civil Application No. 7327 of 1993

MR MC BAROT for Petitioner No. 1

MR JM BAROT for Respondent No. 1

Mr.Prachhak, Asst.GOVERNMENT PLEADER for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 28/04/2005

ORAL JUDGEMENT

The short facts of the case are that the

petitioner as per order, dated 1.4.1958 was declared as tenant by the order of the Mamalatdar and on the basis of the said decision of the Mamalatdar, the Revenue Entry No.1170 also came to be mutated. It appears that thereafter in the year 1991 the respondent No.1 preferred appeals being Appeal Nos.60/91 and 146/91 before the Deputy Collector (Land Reforms) and the said appeals came to be dismissed as per order dated 17.3.1991 and the respondent No.1 also carried the matter before the Revenue Tribunal by preferring Revision Application No.TEN.BA 294/92. It appears that the respondent No.1 submitted withdrawal purshis and the said revision ultimately came to be disposed of as withdrawn and withdrawn as per order dated 23.2.93. In the mean time, the petitioner applied for converting the land for NA use and as per the order, dated 8.6.92 the Dist.Collector, Mehsana granted the permission for converting the land for NA use. The petitioner has also made a statement in the petition at page 3 that after the status of the petitioner was confirmed as tenant, the petitioner had applied for conversion of the land from new tenure to old tenure, and the same came to be granted by the Dist.Collector, Mehsana. It appears that the respondent No.1 had also filed the objection against the application of the petitioner for declaring the land for NA use and the said objections filed by the respondent No.1 came to be dismissed by the District Collector as per the order dated 12/13.5.92. It appears that the respondent No.1 preferred revision being Revision No.2/92 against the order for granting granting permission for NA use before the State Govt under section 211 of Bombay Land Revenue Code. The said revision was entertained by the State Govt However, on the date of hearing on 4.2.1993 the respondent No.1 submitted purshis for withdrawal of the revision. But, the State Govt found that by permitting withdrawal there is likely to be misuse and therefore it was decided to proceed with the examination of merits of revision and therefore the State Govt passed the final order in Revision on 13.5.93 whereby the order for NA use is set aside and it is further directed that the status of the petitioner as tenant is not legal and proper and the proceedings of NA are nullity and it was also observed for initiation of proceedings under section 84C of Bombay Tenancy & Agricultural Lands Act (hereinafter referred to "the Tenancy Act"). It is under these circumstances the petitioner has approached this court by preferring the present petition.

2. Heard Mr.D.M.Barot for Mr.M.C.Barot for the petitioner, Mr.Jayesh M.Barot for respondent No.1 and Mr.Prachhak, Ld.AGP for respondent Nos 2,3 & 4.

3. Mr.Barot, Ld.advocate for the petitioner raised the first contention that once the purshis having been filed by the petitioner before the State Govt, the State Govt ought not have proceeded with the hearing of revision or further examination of the matter and ought not have disposed of the revision as withdrawn. He, therefore, submitted that the order can be said as without jurisdiction. The aforesaid aspects can not detain the court further except for rejecting the contention because the revisional powers of the State Govt are dependent upon the initiation of proceedings by any authority. The said proceedings can either be initiated suo motu by any authority or at the instance of aggrieved party. Once it has come to the knowledge of the State Govt, may be, at the instance of aggrieved party and thereafter if the proceedings are initiated, merely because the party who moved the State Govt is not desirous to prosecute the matter and if the State Govt decides to examine the matter further, the said order can not be said to be without jurisdiction because the scope of revisional jurisdiction is wide enough to attract the power of the State Govt if the State Govt is satisfied that the illegalities are committed by the authority or the proceedings should be examined on merits.

4. The second contention raised by Mr.Barot for the petitioner that the State Govt could not examine the legality and validity of the order passed under the Tenancy Act while exercising the jurisdiction under Bombay Land Revenue Code (hereinafter referred to as "the Code") deserves consideration. As such, the law is settled on the said aspects also in as much as while exercising the jurisdiction under one enactment the authority can not finally conclude its view on the other enactments. Reference may be made to the decision of this court in the case of Evergreen Apartment Coop.Housing Society vs Special Secretary, Revenue Dept, Gujarat State reported in 1996(1)GLR 113 read with the decision of this court dated 28.9.04 in the case of Jayantilal Jethalal Soni vs State of Gujarat in Special Civil Application No.12547/04 and therefore at the most the authority exercising revisional jurisdiction can make reference if it primafacie appears that there is breach of other enactments, but, in any case, the revisional authority while exercising jurisdiction under the Code can not finally conclude on the other enactments.

5. If the facts of the present case are examined in the light of the above referred settled legal position, it appears that the State Govt while exercising the

revisional jurisdiction under the Code has upset the exercise of power by the competent authority under the Tenancy Act. As observed earlier, as per the order of the Mamalatdar & ALT the petitioner was held to be the tenant. The statutory appeal under the Tenancy Act against the order of the Mamalatdar before the Deputy Collector (Land Reforms) was confirmed and not only that but the revision preferred before the Revenue Tribunal was withdrawn. Therefore, it can be said that the issue in respect of the status of the petitioner as the tenant of the land in question came be concluded under the Tenancy Act. It is not brought to the notice of the Court that the order of the tribunal permitting withdrawal is reversed or the order of the competent authority under the Tenancy Act declaring the status of the petitioner as tenant of the land in question is upset by any authority nor it is even referred to by the State Govt in the impugned order. Therefore, when the revenue tribunal had allowed the withdrawal and consequently the order of the Dy.Collector (Land Reforms) in appeal under the Tenancy Act had become final, it was not open to the State Govt to reexamine the matter once again on the question of status of the petitioner as tenant of the land in question. It appears that while making reference under section 65 of the Code the State Govt has observed that if the is a restricted tenure and the land is in possession, the holder can not be treated as occupant and eligible to apply for conversion of status and land for NA use. The aforesaid aspects may at the most hold good if the land has continued as restricted tenure and not old tenure. As observed earlier, the statement is made in the petition at page 3 that the petitioner applied for conversion from new tenure to old tenure and the same has been granted by the Collector. No material is produced by the other side to controvert the statement nor it is the case contended before this court that the land was not converted into old tenure. If the holding by the petitioner of the land in question is old tenure, the application for permission or granting of said permission under section 65 of the Code by the Collector for NA use can not be said to be illegal as per the provisions of Bombay Land Revenue Code.

6. However, it appears that after making reference to section 65 of the Code the State Govt has further proceeded to reexamine the status of the petitioner as tenant of the land in question and the observations made at para 3 of the impugned order whereby it is concluded that the status of the petitioner can not be said as tenant of the land in question. The aforesaid observations made by the State Govt in exercise of power

under section 211 of the Code can be said as in excess of jurisdiction by the State Govt since such observations relate to the proceedings under Tenancy Act and not only that but it results into upsetting the proceedings which have been already concluded under the Tenancy Act. Therefore the State Govt while making observations to conclude on that basis has exceeded its jurisdiction while exercising revisional power under the Code. Such an exercise of power beyond the scope of jurisdiction by the State Govt has resulted into cancellation of the order of NA and it can be said that the injustice is caused to the petitioner by exercise of power by the State Govt beyond the scope and ambit of Section 211 of the Code which deserves to be interferred with and quashed by this court under Article 227 of the Constitution of India.

7. In view of the aforesaid observations and discussion, the impugned order passed by the State Govt deserves to be quashed and hence same is quashed. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

28.4.05 (JAYANT PATEL,J)